SUPREME COURT U.S.
FILED
SEP 11 1961
JAMES R. BROWNING, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1961

No. 414

SALVATORE ANNUNZIATO,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To The Honorable, The Chief Justice, And The Associate Justices Of The Supreme Court Of The United States:

The petitioner, Salvatore Annunziato, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case, July 26, 1961.

The opinion of the Court of Appeals (LUMBARD, GOODRICH and FRIENDLY, Circuit Judges) is thus far unreported and is reprinted in petitioner's Appendix A. Petition for rehearing was denied without opinion. There was no written opinion filed in connection with the district court proceedings.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

STATEMENT OF THE CASE

The judgment of the Court of Appeals from which petitioner seeks review affirmed a judgment of conviction for violation of Section 186 of Title 29, United States Code. At the times relevant to the alleged offense, Section 186, in pertinent part, declared it:

> ". . . unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value."

Defendant-petitioner was charged with two separate violations of the aforecited statute, the first count by indictment and the second by information. At trial of the case, a jury acquitted petitioner on the information but found him guilty of the offense charged in the indictment. Appeal was taken to the Court of Appeals for the Second Circuit; that court, on July 26, 1961, affirmed the conviction.

A petition for rehearing was filed with the Court of Appeals on August 9, 1961. Although the court, on August 14, 1961, declined to rehear the case, it did at that time order a stay of mandate for thirty days pending a petition for certiorari to be filed in this Court.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in refusing to hold that a de facto defendant, called to testify before a grand jury inquiry, must be apprised of the fact that he is the object of the investigation?

2. Did the Court of Appeals err in upholding the trial court's arbitrary refusal to submit the following query to the prospective jurors on *voir dire*: "Are you a member or contributor to any organization that has as its object law enforcement?"

3. Did the Court of Appeals err in holding that various pieces of hearsay testimony were properly admitted into evidence against defendant?

4. Did the Court of Appeals err in holding that failure to order produced a prior statement to the F.B.I. made by one of the government witnesses was not "prejudicial" because the statement "jibed" with the witness' trial testimony?

5. Did the Court of Appeals err in holding that the petitioner was not entitled to production of a typed F.B.I. report of an interview with another government witness because the defense "failed to demand it"?

REASONS FOR ALLOWANCE OF THE WRIT

Statement of the Facts

In 1957 the Terry Contracting Company, Incorporated was engaged in the construction of the Connecticut Turnpike in the City of Bridgeport. During this same period the defendant, Salvatore Annunziato, was business agent for the International Union of Operating Engineers, AFL-CIO, and his responsibilities included the supervision of the Terry company job site. This was the background situation which led to criminal charges against the defendant.

In September, 1959, the defendant was subpoenaed to testify before a grand jury for the District of Connecticut in a John Doe proceeding. He was asked many questions, some of which he answered, but as to others he invoked the right against self-incrimination. Inspection of the transcript by the Court of Appeals re-

vealed that Annunziato was informed of his right against self-incrimination, but it appears he was never advised of the nature and purpose of the investigation — or that he was the hunted party. The nature of many of the questions asked, as they were revealed at a later contempt hearing, strongly indicated that the defendant was marked for prosecution, and was a de facto defendant.

In May of 1960, after again attempting to "persuade" defendant to answer some blatantly incriminating questions, the grand jury returned an indictment. Count 1 alleged that on or about July 3, 1957, the defendant "did knowingly, willfully and unlawfully receive and accept, agree to receive and accept, money and other property of value, to wit: $300.00." Count 2 charged substantially the same in regard to $50.00 alleged to have been received by defendant on or about December 24, 1957.

Prior to trial, the Government filed an information charging defendant with substantially the same offense as contained in Count 2 of the indictment. At trial, the Government moved to nolle Count 2 of the indictment and to consolidate the indictment and the information for trial. This motion was granted without objection by the defendant. (R. 2, 3)

The defendant requested that the trial judge ask the prospective jurors thirteen questions on *voir dire*. The court covered all of them in substance with the exception of Numbers 4 and 12, which the court specifically declined to ask. (R. 1) The key question on this petition, as aforementioned, was, "Are you a member or contributor to any organization that has as its object law enforcement?"

At trial, the Government attempted to substantiate the allegations in the indictment and the information through a series of witnesses who were either officers or employees of the Terry company. With regard to the indictment, the testimony indicated that on July 2, 1957, Harry Terker, then president of the Terry company and

deceased at the time of trial, met William Mayhew, chief engineer, in the company's New York office, and gave him an envelope of undisclosed contents to be delivered to the defendant in Bridgeport the following day. (R. 169-181) Testimony also tended to show that the defendant was at the job site the following day, and received an envelope from Mayhew. (R. 26, 119, 171)

In an attempt to show the contents of this envelope, the Government then used a series of admittedly hearsay conversations among the employees and officers of the Terry company. Richard Terker, then secretary, testified that his father, Harry Terker, said that the defendant had made a telephone request for money, and that he, Harry Terker, "had agreed to send some up to Connecticut for him," (R. 368), mentioning the sum of $250.00. (R. 395) Ralph Cohen, comptroller, testified that he had given Harry Terker $300.00 from the petty cash account on June 28, 1957, and that he knew from hearsay sources that the money was for someone on the Bridgeport job. (R. 305-311) William Mayhew testified to the conversation he had with Harry Terker when he received the envelope. (R. 444-446) All these conversations were admitted over the defendant's objections. The justification given for their admission was that the co-conspirator exception to the hearsay rule might be applicable. However, the trial court warned that the Government must connect these conversations by establishing with independent evidence the existence of the conspiracy and defendant's connection with it. (R. 306, 360, 441)

In regard to the information, testimony showed that an envelope containing $50.00 was delivered to one Palumbo by Arthur Van Dommellen. (R. 125, 405-409) It was also shown that Palumbo was a member of the Operating Engineers, a friend of defendant's, and present at a party with defendant on December 24, 1957. (R. 409) But also allowed in over defendant's objection was a conversation between Mayhew and Van Dommellen. (R. 134, 218-221)